

LAST MINUTE AGENDA INFORMATION 2

06/05/13 Regular Meeting

(Agenda Related Writings/Documents provided to a majority of the City Council after distribution of the Agenda Packet for the June 5, 2013 Regular meeting.)

<u>ITEM NO.</u>	<u>DESCRIPTION</u>
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6.2	MANAGEMENT OF SPORTS PARK. (0920-40) a. E-mail message from Vincent Farnsworth, dated June 3, 2013
7.1	ADOPTION OF RESOLUTION NO. SA-13-24 APPROVING, AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO, A PROFESSIONAL SERVICES AGREEMENT WITH FIRST SOUTHWEST COMPANY TO PROVIDE FINANCIAL ADVISORY SERVICES FOR THE POSSIBLE REFUNDING OF THE SERIES 2003A TAX ALLOCATION BONDS. ADOPTION OF RESOLUTION NO. SA-13-25 APPROVING, AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO, A PROFESSIONAL SERVICES AGREEMENT WITH JONES HALL TO PROVIDE BOTH BOND AND DISCLOSURE COUNSEL SERVICES FOR THE POSSIBLE REFUNDING OF THE 2003A TAX ALLOCATION BONDS. (0340-10 & 0418-50) a. Staff Report

From: vincent <
Sent: Monday, June 03, 2013 2:47 PM
To: Jim Janney; loriebraggib@aol.com; patton4ib@yahoo.com; pbilbray@gmail.com; espriggs@yahoo.com; ibcmanager; Jacque Hald
Subject: Sports Park Privatization

2013 JUN -3 PM 3:30
CITY MANAGER &
CITY CLERK OFFICES

Dear Mayor Janney and other officials of Imperial Beach,

I ask you to vote NO to the Item 6.2, "MANAGEMENT OF SPORTS PARK" of the June 5th, 2013 agenda and to add this message to the official public comments of the meeting. I call on you to stop this process now for these reasons:

1. Based on the past record, the YMCA taking over the park would:
 - end up costing the city more than it does currently,
 - result in poor service or even dangerous conditions,
 - require more time of city administrators instead of less,
 - cause a loss of control of public lands.
 - be very expensive to reverse.

For more info on these points, see the text after the end of this message.

2. The accounting concerning the cost of maintaining the park, and the supposed financial burden to the city, is unclear and unreliable.
3. Regardless of cost, any plan which calls for fees to the free skate park and youth center or increased fees to the baseball fields is intolerable and immoral. It would put financial burdens on low-income military families and in effect make a public park no longer public; IB citizens of low income would be paying taxes for a park that they can't access.
4. The YMCA's user fees destroy open access to activities that keep young people out of trouble.
5. YMCA representatives have shown real disregard and rudeness to IB citizen in their public statements concerning "scholarships" as the only way for poor people to use the park.
6. We must support the generous donors, from Tony Hawk to all those who built up the baseball fields and the Teen Center, who have always said the park must remain free of charge.
7. The town is full of people willing to support the park with ideas to generate extra revenue, and a coalition to support the public sports park is getting bigger every day. The city council should be working with these people instead of abandoning the park.

As a resident of IB and a member of the growing coalition against privatization, I urge you to cancel all privatization plans. I also call on you to pass a resolution confirming that the park will remain under public management and proactively supported by the city council working with the citizens of Imperial Beach.

Respectfully,
Vincent Farnsworth
Imperial Beach, CA

Date: 6/5/13 Item No. 6.2
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<http://www.inthepublicinterest.org/node/457>

Myth #1: Privatization saves money.

The Truth: Privatization often raises costs for the public and governments.

Proponents of privatization promise to fix budget woes by saving the government money. But numerous examples in a variety of sectors show that projected savings don't always materialize. Cost overruns combined with hidden and indirect costs, such as contract monitoring and administration, can make privatization more expensive than in-house services for governments. In fact, the Government Finance Officers Association estimates that hidden and indirect costs can add up to 25% to the contract price.[i]

The Government Accountability Office has found that methods by which agencies and privatization consultants conduct projections and report contract costs can make cost savings appear greater than they actually are.[ii] According to a 2007 survey by the International City/County Management Association, 52% of governments that brought services back in-house reported that the primary reason was insufficient cost savings.[iii]

- An audit report from the Wisconsin Legislative Audit Bureau revealed that the state's department of transportation wasted more than \$1 million by outsourcing almost half its engineering work to private contractors over the past five years. The audit found that about 60% of these outsourced jobs could have been done at a lower cost by state workers, which would have saved the state \$1.2 million.[iv]
- In February 2009, Chicago and Chicago Parking Meters LLC signed a 75-year concession agreement for the operation of Chicago's 36,000 parking meters. Along with many problems related to malfunctioning meters, **rates have significantly increased**, causing many residents to think twice before parking in the city. Many stores and merchants in the area complain that the rates have decreased business. In some parts of the city, rates increased in the first months to 28 quarters (\$7) for 2 hours of parking time. The parking charges also have been extended to 7 days a week and for more hours during the day.[v]

Myth #2: Private companies do a better job than the public sector.

The Truth: Many examples show declines in service quality under private contractors.

Faith in the private sector to outperform government agencies is deeply ingrained in the American psyche. However, the facts disproving that belief are steadily mounting. In many cases, private contractors have failed to deliver, leaving communities without vital services and assets. Private companies naturally seek to maximize profits, which can incentivize cutting corners to reduce costs. This can greatly impair service quality and maintenance of vital assets. The most popular reason for in-sourcing, according to the International City/County Management Association survey mentioned above, was a decline in service quality. Over 60% of governments that brought functions back in-house reported this as their primary motivation.[vi]

- In 2009, Indiana cancelled its \$1.34 billion contract with IBM to provide public benefit eligibility services. For two years, vulnerable families failed to receive benefits for which they qualified, including food stamps, health coverage, and cash assistance, due to the company's poor provision of these services. The privatized system led to high error rates and poor timeliness, among many other problems.[vii]

- In 2010, Gary, Indiana cancelled its 10 year contract with United Water. In May 2008, a state inspection found that the district, under United Water's management, had violated discharge limits 84 times between 2005 to 2007; had at least 25 pieces of broken equipment; filed inadequate monitoring reports; and failed to meet mandated deadlines.^[viii] By cancelling the contract and bringing water service back in-house, the city expects costs to decrease from \$16 million to \$8 million a year.

Myth #3: Privatization allows governmental entities to better anticipate and control budgetary costs.

The Truth: Cost estimates are extremely unreliable and privatization can cause result in unforeseen budgetary consequences.

Some believe that privatization allows for more precise budgeting, since the inflow or outflow of money appears fixed once a contract with a private entity is signed. But hidden costs and cost overruns can significantly distort these figures, market circumstances can reverse the estimates, and ripple effects of privatization can increase unexpected areas of governmental budgets.

Governments cannot anticipate the cost of privatization failures, from the overtime expenses of sending city work crews to correct sloppy work by private road maintenance companies to the massive ordeal of rebuilding entire outsourced departments when a contractor's costs, delays or service breakdowns become unsustainable.

- In 2009, the Pew Center on the States analyzed Pennsylvania's failed attempt to sell the Pennsylvania Turnpike. The Governor predicted that the lease income would generate about \$1 billion a year for the state's transportation budget. But this rosy figure assumed a 12% annual return on the state's investment. According to the Pew report, with the stock market decline the previous year, the state would have actually lost money on its investment.^[ix]
- Sometimes perceived cost savings in one area can increase the cost in another area of the budget. According to the Economic Policy Institute, in 2006, nearly 20% of all federal contract workers earned less than the federal poverty level of \$9.91 an hour, while 40% earned less than a living wage. Many of these workers do not receive employer-sponsored health benefits^[x]. As a result, these workers must rely on public benefit programs, such as Medicaid and the Earned Income Tax Credit (EITC) program to make ends meet. Lower wages and benefits, while making contracts appear cost-efficient, lead to increases in other parts of the federal and state budgets.

Myth #4: Privatization allows governmental entities more administrative flexibility.

The Truth: Privatization requires substantial administrative resources for monitoring and oversight.

Substantial time and personnel are necessary to adequately monitor contracts, especially those involving essential governmental functions. If governments don't dedicate sufficient personnel and time to monitoring contracts, they run a high risk of poor contractor performance and wasting large amounts of money.

- In a *Cincinnati Enquirer* investigation, the newspaper concluded that the State of Ohio and many local governments engaged in "casually administered" contracts with "lax controls." From 2000-2003, 116 state audits found that contractors misspent \$97.7 million tax dollars.^[xi]

- Texas entered into a contract with Convergys to administer human resources functions for the Health and Human Services Commission. An audit in 2006 revealed numerous problems related to contract oversight. As a result of the minimal oversight, the state was unable to be fully involved in the development, testing, and validation of contractor's system. The agency relied on the contractor to both develop and perform the testing and then to assess the system and report the results of those tests.^[xii] As a result, the agency did not have the working knowledge of the system to hold the contractor accountable for technical performance issues.

Myth #5: The public still maintains control over a privatized asset or service and the government retains the ultimate ability to make related public policy decisions.

The Truth: Privatization can bind the hands of policymakers for years, allowing private companies significant control of a privatized asset or service and the ability to dictate important policy decisions.

Non-compete and "make-whole" clauses are just a few of the ways that private companies control privatized assets and dictate important public policy decisions. Non-compete clauses forbid competition and prohibit the government from making policy and planning decisions that may affect the contractor's revenues. These contract terms have prevented numerous cities and states from improving public transportation or implementing other planning or environmental initiatives that may have threatened contractor revenues. Asset privatization contracts also frequently stipulate that the government must reimburse or "make whole" the contractor if an event, such as a parade or sudden natural disaster, occurs. Often the true ramifications of these types of provisions, which help reduce risk and guarantee profits for contractors, come as a surprise to policymakers.

- In September 2008, Indiana was required to reimburse the private Indiana Toll Road operator \$447,000 for tolls that were waived for people being evacuated during a severe flood. This requirement in the contract forced the state to pay money to a private contractor in order to ensure the public's safety.^[xiii]
- In 2008, the private contractors that operated the Northwest Parkway in Denver, Colorado, objected to improvements on W. 160th Avenue. The 99-year privatization contract allowed the private company to prevent improvements on city-owned and maintained roads, since the improvements "might hurt the parkway financially," by providing an alternative route for travelers, thus potentially reducing toll revenue.^[xiv]

Myth #6: If anything goes wrong, the government can easily fire the contractor or adjust the contract.

The Truth: Reversing privatization involves huge costs and service interruptions.

When governments turn over core services to private contractors, it can be very expensive and time-consuming to alter contract terms or cancel a contract. Taxpayers can be stuck with legal expenses when companies file lawsuits seeking greater payment. Additionally, contract cancellation can lead to service interruptions or loss of access to public assets during the transition period.

- Virginia sought to end its contract with Northrop Grumman for statewide information technology services because of numerous instances of missed deadlines, cost overruns, and technical problems. The state's auditors calculated that cancelling the contract during fiscal 2010 would cost Virginia \$400 million, which auditors said the state can't afford.^[xv] As of 2010, the state may be forced to remain in the contractual relationship because it cannot afford the cancellation.

- In 2007, when Texas cancelled its contract with Accenture for public benefits eligibility services, it took 20 months for both parties to settle issues related to the contract cancellation. In the meantime, many families continued to have problems accessing food stamps, welfare, and health insurance because the state had fired a large portion of its case workers at the beginning of the privatization effort. Nearly three years later, Texas is still struggling to rebuild its public workforce.[xvi]

Myth #7: Companies are chosen for privatization contracts on the merits, not based on political or financial connections.

The Truth: Government for profit opens doors to unscrupulous behavior by politicians and businesses.

As many examples illustrate, the companies that receive lucrative contracts may not be the best company for the job, but instead may have the most insider connections.

- Two judges in Pennsylvania received \$2.6 million over seven years from Pennsylvania Child Care LLC, a private company that operated a juvenile detention center. The judges helped secure the company a 20-year, \$58 million contract with the county and aggressively sentenced children for minor infractions to ensure that the detention center remained at capacity. In early 2009, the two judges were charged with racketeering, extortion, bribery, money laundering, and fraud, among other crimes.[xvii]
- In 2009, the former president of the Jefferson County, Alabama county commission was convicted of taking bribes to steer government business to J.P. Morgan. The county commissioners followed advice of a J.P. Morgan consultant and set up an unorthodox financing scheme to refinance the debt on its sewer system. The county paid \$120 million in fees -- six times the prevailing rate - to buy interest-rate swaps from J.P. Morgan and several other financial institutions. Within five years, the bad advice had increased the county's debt by \$277 million. Low-income residents bore the consequences as the county raised sewer rates again and again to stave off bankruptcy.[xviii]

2013 JUN -3 PM 3:09

STAFF REPORT
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCYCITY MANAGER &
CITY CLERK OFFICES

TO: CHAIR AND MEMBERS OF THE IMPERIAL BEACH
REDEVELOPMENT AGENCY SUCCESSOR AGENCY

FROM: GARY BROWN, EXECUTIVE DIRECTOR *GB*

MEETING DATE: JUNE 5, 2013

ORIGINATING DEPT.: ADMINISTRATIVE SERVICES DEPARTMENT *BN FOR*

SUBJECT: ADOPTION OF RESOLUTION NO. SA-13-24 APPROVING, AND
AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO,
A PROFESSIONAL SERVICES AGREEMENT WITH FIRST
SOUTHWEST COMPANY TO PROVIDE FINANCIAL ADVISORY
SERVICES FOR THE POSSIBLE REFUNDING OF THE SERIES
2003A TAX ALLOCATION BONDS

ADOPTION OF RESOLUTION NO. SA-13-25 APPROVING, AND
AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO,
A PROFESSIONAL SERVICES AGREEMENT WITH JONES
HALL TO PROVIDE BOTH BOND AND DISCLOSURE
COUNSEL SERVICES FOR THE POSSIBLE REFUNDING OF
THE 2003A TAX ALLOCATION BONDS

BACKGROUND:

On December 11, 2003, the former Imperial Beach Redevelopment Agency (the "Former Agency") and the Imperial Beach Public Financing Authority (the "Financing Authority"), a Joint Powers Authority between the City of Imperial Beach (the "City") and the Former Agency, issued Tax Allocation Bonds, Series 2003A (the "Series 2003A TABs") secured by the Former Agency's tax increment revenues as funding for the debt service obligations. The Series 2003A TABs were issued in order to finance redevelopment activities relating to improvements within the Original and Amended Redevelopment Project Areas ("Project Areas") including street improvements, public park capital improvements, construction of community facilities, and landscaping improvements, among others.

Debt service on the Series 2003A TABs has been and is repaid solely with tax increment revenues generated within the Project Areas. As of June 5, 2013, the Series 2003A TABs are outstanding in the amount of \$17,965,000, with annual principal maturities ranging from June 1, 2014 through June 1, 2033. These principal bond maturities can be prepaid on December 1, 2013, and on any subsequent date thereafter, without a prepayment penalty. The Series 2003A TABs have interest rates ranging from 5.00% to 6.00%.

Pursuant to Assembly Bill No. X1 26 ("AB 26") and Assembly Bill No. 1484 ("AB 1484") (collectively referred to herein as the "Dissolution Act"), the Imperial Beach Redevelopment Agency Successor Agency (the "Successor Agency") may cause the refinance or refund of the

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Series 2003A TABs for debt service savings by issuing, or causing the issuance of, Property Tax Revenue Refunding Bonds, (the "Refunding Bonds") in accordance with the Dissolution Act including, without limitation, Sections 34177.5 and 34180(b).

Based on interest rates in the current market, annual debt service savings are projected to average \$295,000 from fiscal year 2013-14 through 2032-33, and total \$5.93 million. Accounting for the time value of money, the discounted present value savings are \$4.03 million, which is equivalent to 22.44% of the \$17,965,000 of the Series 2003A TABs to be refunded. With the City's share, as a taxing entity, of distributions from the Redevelopment Property Tax Trust Fund ("RPTTF") is approximately 26%, the projected refunding savings allocated to the City's General Fund, based on anticipated payments of RPTTF distributions to the City pursuant to Section 34183(a) of the Dissolution Act, are estimated to be \$77,000 annually, \$1.54 million in total or \$1.05 million on a present value basis.

DISCUSSION:

In order for the Successor Agency to issue or cause the issuance of the Refunding Bonds, various formal approvals are necessary from the Successor Agency and its Oversight Board and the California Department of Finance (the "DOF") if the DOF requests review, in addition to approval from the City. It is anticipated that the Successor Agency and Oversight Board would first authorize the issuance of the Refunding Bonds by approving substantially final bond documents, including, without limitation, the trust indenture and preliminary official statement (the "Financing Package"). The Successor Agency staff would also submit the Financing Package to the DOF. Assuming approval from the DOF if review is requested, the issuance of the Refunding Bonds would be authorized.

However, if material changes to the bond documents are required by the DOF or other material events occur, then the Financing Package would be resubmitted to the Successor Agency and the Oversight Board, as well as the City, in order to re-authorize the issuance of the Refunding Bonds. Although unlikely, a re-authorization from the Successor Agency, City and Oversight Board may be necessary due to any material changes made to the financing documents after initial approval, any stipulations added by the DOF, or changes in the municipal bond market. Further, the Successor Agency would submit the Financing Package to Standard & Poor's, requesting receipt of a credit rating shortly after the Refunding Bonds are authorized by the Successor Agency and the Oversight Board.

Presented on the next page are targeted key activities and preliminary dates.

**Imperial Beach Redevelopment Agency Successor Agency
Refunding of Series 2003A TABs – Preliminary Financing Schedule (5.31.13)**

Week	Financing Activity
Jun 07	Kick-off conference call with working group
Jun 24	First distribution of financing documents
Jul 08	Working group meeting/conference call
Jul 22	Second distribution of financing documents
Jul 29	Working group meeting/conference call
Aug 02	Financing Package provided to Successor Agency, Oversight Board, & DOF
Aug 07	Successor Agency authorize issuance of the Refunding Bonds
Aug 14	Oversight Board authorize issuance of the Refunding Bonds
Aug 19	Submit approved Financing Package to DOF for potential review
Oct 14	Deadline for DOF to approve the OB action or return item for reconsideration
Oct 21	Distribute UPDATED Financing Package to Successor Agency & Oversight Board, if needed; Distribute credit packages to Standard & Poor's and bond insurer(s)
Nov 01	Successor Agency & Oversight Board re-authorize issuance of the Refunding Bonds, if needed; Successor Agency approval Nov. 6 and Oversight Board approval Nov. 13
Nov 18	Receive Standard & Poor's Rating / Distribute Preliminary Official Statement
Dec 02	Pricing of Refunding Bonds
Dec 16	Closing of transaction (2003A Bonds legally defeased)

Financing Team Members

As part of Resolution No. SA-13-24 and Resolution No. SA-13-25, the Successor Agency would authorize Staff to retain the services of First Southwest Company for financial advisory services and the services of Jones Hall for both bond and disclosure services. Both consultants would be part of the financing team that will be involved in the Refunding Bonds transaction. The following parties are proposed to serve as members of the financing team for the Refunding Bonds:

1. Bond Counsel – Jones Hall
 - a) The law firm retained to provide a legal opinion confirming that the issuer is authorized to issue proposed securities, the issuer has met all legal requirements necessary for issuance, and interest on the proposed securities will be exempt from federal income taxation and, where applicable, from state and local taxation.
 - b) Prepares, or reviews and advises the issuer regarding, authorizing resolutions, ordinances, trust indentures, official statements, validation proceedings and litigation.
2. Disclosure Counsel – Jones Hall
 - a) The law firm retained to prepare the Official Statement, the Bond Purchase Contract, the Continuing Disclosure Agreement, and any Blue Sky Memoranda.
 - b) The Official Statement is the primary and official source of material information about the issuer and the securities in the transaction.
3. Fiscal Consultant (consultant to be determined)
 - a) The firm retained to prepare a report on the economic feasibility of the Project Areas

- providing the security of the debt issue.
 - b) The views of the feasibility consultant are taken into account by the credit rating agencies, underwriters and investors in the process of marketing the bonds.
4. Financial Advisor, First Southwest Company:
- a) A professional consultant retained to advise and assist the issuer in formulating and/or executing a debt financing plan to accomplish the public purposes chosen by the issuer. Advises the issuer on matters pertinent to the debt issue, such as structure, timing, marketing, credit enhancements, fairness of pricing, terms, and credit ratings.
 - b) Serve issuer in a "fiduciary capacity", representing the issuer's interests in negotiations with underwriters, rating agencies, banks and other parties.
 - c) Financial advisory firms are required to register with the Securities and Exchange Commission (SEC) and with the Municipal Securities Rulemaking Board (MSRB), and are regulated by the MSRB.
5. Wells Fargo Bank, Trustee/Escrow Agent
- a) A commercial bank or trust company retained to perform administrative duties relating to a bond issue, such as establishing and holding bond funds and accounts, disbursing bond proceeds for authorized purposes, paying principal and interest to bondholders, and executing investments.

A sixth financing team member, Underwriter or Investment Banker, will be selected through a request for qualifications/proposal process later in the financing process. The Underwriter or Investment Banker would meet the following requirements:

- a) A dealer which purchases from the issuer a new issue of municipal securities for resale to investors; has an "arm's-length relationship" with the issuer.
- b) Investment banking or underwriting firms are required to register with the SEC and with the MSRB, and follow the rules set out by both the SEC and the MSRB.

Professional Services Agreements

First Southwest Company, Jones Hall, and the additional financing team members listed above would provide professional services to the Successor Agency and would be funded through, the issuance of the bonds. As is typical in municipal bond financing, with the exception of the costs discussed below, the professional services costs of the financing team members are only paid if the bond deal is successfully completed, or closed. In other words, payment of the costs of issuance is generally made on a contingency basis. The Successor Agency's approval of the cost of issuance will be proposed as part of the resolution that would authorize the issuance of the Refunding Bonds and approve the bond documents, which staff will present to the Successor Agency and City Council at a future date. All contingent costs of issuance would be deducted from the proceeds of the new Refunding Bonds issue, and would be deemed as enforceable obligations as part of the financing documents submitted to the DOF for review. The approval of the bond documents and contingent costs of issuance contained within by the Successor Agency and Oversight Board, and the DOF if review is requested, would constitute approval of the cost of issuance as an enforceable obligation and would likely not be required to be included on the ROPS 13-14B. However, if required by the DOF, these costs of issuance would be included on the ROPS 13-14B.

There is one exception, however, to the financing team members rendering their services on a

contingency basis. That exception is that a portion of the total professional services fees and expenses of First Southwest Company (the Financial Advisor) in an amount not to exceed \$19,000 would not be paid from proceeds of the Refunding Bonds, if the bond deal is not completed. Because completion of this bond issue is subject to approval by the Oversight Board and potential approval by the DOF if review is requested, and is a unique and particularly complex bond issue given the recent dissolution of redevelopment agencies, First Southwest Company has proposed that, if the Refunding Bonds are not issued by February 28, 2014, accrued compensation and any accrued expenses not-to-exceed \$19,000 will be due and payable by the Successor Agency. This \$19,000 is part of the total \$50,000 proposed by First Southwest Company for their financial advisory services. If the Series 2003A TABs refinancing does not close by February 28, 2014, the \$19,000 non-contingent portion of the financial advisory fees and accrued costs would be paid by the Successor Agency and will be included in the ROPS 13-14B for approval as a proposed Successor Agency enforceable obligation.

The non-contingent portion of the First Southwest Company's (Financial Advisor) proposed contract is \$4,000 above the \$15,000 threshold requirement to perform a formal competitive bid process for the procurement of professional services. Imperial Beach Municipal Code Section 3.04.160 (G) states that the City Council may waive the formal bid requirements for the procurement of professional services by resolution when it is necessary for the management of the City's affairs. (Ord. 2009-1084 § 2). Due to the unique nature of the services rendered and complexity of the proposed refinancing transaction, staff recommends that the Successor Agency authorize the Executive Director to enter into a professional services contract with First Southwest Company under the terms discussed above. The \$19,000 non-contingent portion of the contract would only be due and payable if the Series 2003A TABs were not refinanced by February 28, 2014. As with Jones Hall, if the Series 2003A TABs are refinanced by February 28, 2014, the entire cost for financial advisory professional services of First Southwest Company would be considered a "cost of issuance" and paid from the proceeds of Refunding Bonds.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

Based on interest rates in the current market, annual debt service savings are projected to average \$295,000 from fiscal year 2013-14 through 2032-33, and total \$5.93 million. Accounting for the time value of money, the discounted present value savings are \$4.03 million, which is equivalent to 22.44% of the \$17,965,000 of the Series 2003A TABs to be refinanced. As the City's share of distributions from the Redevelopment Property Tax Trust Fund ("RPTTF") is approximately 26%, the projected refunding savings allocated to the City's General Fund are estimated at \$77,000 annually, \$1.54 million in total, or \$1.05 million on a present value basis. The fiscal impact in FY 2013-14 is estimated to be an additional \$77,000 received by the City's General Fund as part of the corresponding share of funds released from the RPTTF.

DEPARTMENT RECOMMENDATION:

Staff recommends the Successor Agency Board adopt Resolution No. SA-13-24 and SA-13-25 approving the two (2) separate Professional Services Agreements and directing Staff to authorize the Executive Director to enter into the Professional Services Agreements with First

Southwest Company to provide financial advisory services according to the terms contained in Exhibit A (Attachment 2): Draft Agreement; and with Jones Hall for bond and disclosure counsel legal services according to the terms contained in Exhibit B (Attachment 5): Draft Agreement. All of these services would include developing a financing plan for the refunding, selecting financing team members, and proceeding with preparation of bond documents and the preliminary official statement for future authorization by the Successor Agency, Oversight Board, the DOF if review requested, as well as the City. In addition, staff recommends that the Successor Agency stipulate in the financial advisory contract that, if the Series 2003 TABs refunding is not completed by February 28, 2014, then accrued compensation and expenses not-to-exceed \$19,000 will be paid to First Southwest Company and that Successor Agency staff seek payment or reimbursement of this cost as an enforceable obligation of the Successor Agency as part of its ROPS 13-14B.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

Attachments:

1. Resolution No. SA-13-24
2. Exhibit A Draft Professional Services Agreement with First Southwest Company
3. First Southwest Company Proposal and Engagement Letter
4. Resolution No. SA-13-25
5. Exhibit B Draft Professional Services Agreement with Jones Hall
6. Jones Hall Proposal

RESOLUTION NO. SA-13-24

A RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING, AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE, A PROFESSIONAL SERVICES AGREEMENT WITH FIRST SOUTHWEST COMPANY FOR FINANCIAL ADVISORY SERVICES RELATING TO THE POTENTIAL REFUNDING OF THE SERIES 2003A TAX ALLOCATION BONDS

WHEREAS, the Imperial Beach Redevelopment Agency ("Redevelopment Agency") was a redevelopment agency in the City of Imperial Beach ("City"), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) ("Redevelopment Law"); and

WHEREAS, the City Council has adopted redevelopment plans for Imperial Beach's redevelopment project areas, and from time to time, the City Council has amended such redevelopment plans; and

WHEREAS, the Redevelopment Agency was responsible for the administration of redevelopment activities within the City; and

WHEREAS, Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.) ("AB 26") was signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law and the California Health and Safety Code ("Health and Safety Code"), including adding Part 1.8 (commencing with Section 34161) ("Part 1.8") and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the Health and Safety Code; and

WHEREAS, pursuant to AB 26, as modified by the California Supreme Court on December 29, 2011 by its decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment Agency, were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and expeditiously winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85 of AB 26, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 ("Successor Agency"); and

WHEREAS, on February 15, 2012, the Board of Directors of the Successor Agency, adopted Resolution No. SA-12-01 naming itself the "Imperial Beach Redevelopment Agency Successor Agency," the sole name by which it will exercise its powers and fulfill its duties pursuant to Part 1.85 of AB 26, and establishing itself as a separate legal entity with rules and regulations that will apply to the governance and operations of the Successor Agency; and

WHEREAS, as part of the FY 2012-2013 State budget package, on June 27, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012). Although the primary purpose of AB 1484 was to make technical and substantive amendments to AB 26 based on issues that have arisen in the implementation of AB 26, AB 1484 imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind down process of former redevelopment agencies, including without limitation refunding or refinancing bonds or other indebtedness; and

WHEREAS, Health and Safety Code Section 34179 of AB 26 as amended by AB 1484 (collectively the "Dissolution Act") establishes a seven (7) member local entity with respect to each successor agency and such entity is titled the "oversight board." The oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of the Dissolution Act; and

WHEREAS, pursuant to Health and Safety Code Section 34179.7 of the Dissolution Act, the California Department of Finance ("DOF") has issued a Finding of Completion to the Successor Agency; and

WHEREAS, on December 11, 2003, the former Redevelopment Agency and the Imperial Beach Public Financing Authority (the "Financing Authority"), a Joint Powers Authority of the City of Imperial Beach (the "City") and the former Redevelopment Agency, issued Tax Allocation Revenue Bonds, Series 2003A (the "Series 2003A TABs") secured by the former Redevelopment Agency's tax increment revenues as funding for the debt service obligations. The Series 2003A TABs were issued in order to finance redevelopment activities relating to improvements within the Original and Amended Redevelopment Project Areas ("Project Areas") including street improvements, public park capital improvements, construction of community facilities, and landscaping improvements, among others; and

WHEREAS, debt service on the Series 2003A TABs has been and is repaid solely with tax increment revenues generated within the Project Areas. As of June 5, 2013, the Series 2003A TABs are outstanding in the amount of \$17,965,000, with annual principal maturities ranging from June 1, 2014 through June 1, 2033. These principal bond maturities can be prepaid on December 1, 2013, and on any subsequent date thereafter, without a prepayment penalty. The Series 2003A TABs have interest rates ranging from 5.00% to 6.00%; and

WHEREAS, pursuant to the Dissolution Act, the Successor Agency may cause the refinancing or refunding of the Series 2003A TABs for debt service savings by issuing, or causing the issuance, of Property Tax Revenue Refunding Bonds (the "Refunding Bonds") in accordance with the Dissolution Act including, without limitation, Sections 34177.5 and 34180(b); and

WHEREAS, based on interest rates in the current market, refunding the Series 2003A TABs is projected to achieve annual debt service savings for the Successor Agency of an average of \$295,000 from fiscal year 2013-14 through 2032-33, and for a total of \$5.93 million. Accounting for the time value of money, the discounted present value savings are \$4.03 million, which is equivalent to 22.44% of the \$17,965,000 of the Series 2003A TABs to be refunded; and

WHEREAS, the Successor Agency desires to take advantage of the current low interest rate environment in order to minimize its total interest costs on outstanding debt by refinancing/refunding the Series 2003A TABs at a comparatively lower interest rate than the current bond issue's average bond coupon rate and as low of a cost of issuance as possible; and

WHEREAS, in order to effectuate the refunding of the Series 2003A TABs, the Successor Agency desires to retain the services of First Southwest Company for debt financial advisory services, including without limitation the following: to advise and assist in formulating and/or executing a debt financing plan to accomplish the public purposes of the issuer such as minimizing the Successor Agency's total interest costs on outstanding debt; to advise on matters pertinent to the refunding of its Series 2003A TABs such as debt structure, marketing,

timing, credit enhancements, fairness of pricing, terms and credit ratings; and to serve the issuer in a fiduciary capacity representing the issuer's interests in negotiations with underwriters, rating agencies, banks, and other parties; and

WHEREAS, First Southwest Company is a debt financial advisory firm registered with the Securities and Exchange Commission (SEC) and with the Municipal Securities Rulemaking Board (MSRB) and has represented that it possesses the necessary qualifications to provide the services required by the Successor Agency; and

WHEREAS, the Successor Agency staff has authorized the preparation of a Professional Services Agreement (the "Agreement") to retain the services of First Southwest Company as a "Financial Advisor" to the Successor Agency and recommends the Successor Agency's approval relating to same; and

WHEREAS, pursuant to the Agreement, and subject to the below, First Southwest Company shall be compensated for work completed, not to exceed \$50,000 for basic services rendered under the Agreement and all accrued expenses. First Southwest Company would be compensated for additional services only upon prior written approval of the Successor Agency. According to the Agreement, if the Refunding Bonds are issued prior to March 1, 2014, payment to First Southwest Company for compensation and accrued expenses not to exceed \$50,000 will be made by the Successor Agency thru the Refunding Bonds Trustee/Escrow Agent and from the proceeds of the Refunding Bonds within thirty (30) calendar days of receipt of the invoice. However, in the unlikely event that the Refunding Bonds are not issued before March 1, 2014, payment to First Southwest Company for compensation and accrued expenses not to exceed \$19,000 is not contingent on the closing and bond issuance and will be made by the Successor Agency from available funds within thirty (30) calendar days of receipt of the invoice; and

WHEREAS, the non-contingent portion of First Southwest Company's proposed compensation in the amount not to exceed \$19,000 pursuant to the Agreement is \$4,000 above the \$15,000 threshold requirement to perform a formal competitive bid process for the procurement of professional services. Imperial Beach Municipal Code ("Municipal Code") Section 3.04.160(G) states that the City Council may waive the formal bid requirements for the procurement of professional services by resolution when it is necessary or convenient for the management of the City's affairs. (Ord. 2009-1084 § 2). Due to the unique nature of the services rendered and complexity of the proposed refinancing transaction, staff recommends that the Successor Agency waive any applicable formal bid requirements for the selection of First Southwest Company and to approve the Agreement and authorize the Executive Director to enter into the Agreement consistent with the authority provided to the City Council by Municipal Code Section 3.04.160(G); and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the Imperial Beach Redevelopment Agency Successor Agency, as follows:

- Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** Consistent with the authority provided to the City Council of the City pursuant to Municipal Code Section 3.04.160(G), the Successor Agency hereby waives any applicable formal bid requirements for the selection of

First Southwest Company based on the unique nature of the services to be rendered and the complexity of the proposed refinancing transaction and due to the necessity and convenience for the management of the Successor Agency's affairs in this matter.

- Section 3.** The Successor Agency hereby approves the Professional Services Agreement ("Agreement") with First Southwest Company in substantial form as the Agreement attached as Exhibit "A", for bond financial advisory services for a total amount (i) not to exceed \$50,000 if the Refunding Bonds are issued prior to March 1, 2014, payment to First Southwest Company will be made by the Successor Agency thru the Refunding Bonds Trustee/Escrow Agent and from the proceeds of the Refunding Bonds; or (ii) not to exceed \$19,000 if the Refunding Bonds are not issued before March 1, 2014, payment to First Southwest Company will be made by the Successor Agency from available funds including Redevelopment Property Tax Trust Fund distributions pursuant to an approved Recognized Obligation Payment Schedule.
- Section 4.** The Executive Director, or designee, of the Successor Agency is hereby authorized and directed to execute the Agreement in substantial form as the Agreement attached as Exhibit "A", subject to the Oversight Board's approval of the Agreement as required by the Dissolution Act or desired by the Executive Director.
- Section 5.** The Executive Director, or designee, of the Successor Agency is hereby authorized to make non-substantive changes and amendments to the Agreement deemed necessary and as approved by the Executive Director of the Successor Agency and its legal counsel and to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Successor Agency.
- Section 6.** The Successor Agency determines that the activity approved by this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per Section 15378(b)(5) of the Guidelines.
- Section 7.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Successor Agency declares that its board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.
- Section 8.** This Resolution shall take effect upon the date of its adoption

PASSED, APPROVED, AND ADOPTED by the Imperial Beach Redevelopment Agency
Successor Agency at its meeting held on the 5th day of June 2013, by the following vote:

AYES:	BOARD MEMBERS:
NOES:	BOARD MEMBERS:
ABSENT:	BOARD MEMBERS:

JAMES C. JANNEY
CHAIRPERSON

ATTEST:

 /s/
JACQUELINE M. HALD, MMC
SECRETARY



EXHIBIT "A"
Imperial Beach Redevelopment Agency Successor Agency
AGREEMENT FOR PROFESSIONAL SERVICES

FOR FINANCIAL ADVISORY SERVICES RELATED TO THE
POSSIBLE REFUNDING OF THE 2003A TAX ALLOCATION BONDS

This Agreement, entered into this 6th day of June, 2013, by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, a public entity (hereinafter referred to as "AGENCY"), and FIRST SOUTHWEST COMPANY, a California _____ (hereinafter referred to as "CONSULTANT"), (collectively "PARTIES").

RECITALS

WHEREAS, AGENCY desires to take advantage of the current low interest rate environment in order to minimize its total interest costs on outstanding debt by refunding its Series 2003A Tax Allocation Bonds at a comparatively lower interest rates than the current bond issue's average bond coupon rate and at as low a cost of issuance as possible; and

WHEREAS, AGENCY desires to retain a debt financial advisor to advise and assist in formulating and/or executing a debt financing plan to accomplish the goal of minimizing the AGENCY's total interest costs on outstanding debt; and

WHEREAS, AGENCY desires to retain a debt financial advisor to advise on matters pertinent to the refinancing of its Series 2003A Tax Allocation Bonds, such as debt structure, marketing and sale timing, credit enhancement and credit ratings; and

WHEREAS, AGENCY desires to retain a debt financial advisor to advise on the fairness of pricing related to the cost of issuance of the refinancing team members, including the underwriter and/or investment banker; and

WHEREAS, CONSULTANT is a debt financial advisory firm registered with the Securities and Exchange Commission (SEC) and with the Municipal Securities Rulemaking Board (MSRB) and has represented that CONSULTANT possesses the necessary qualifications to provide such services; and

WHEREAS, AGENCY has authorized the preparation of an Agreement to retain the services of CONSULTANT as hereinafter set forth; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BY THE PARTIES THAT AGENCY DOES HEREBY RETAIN CONSULTANT ON THE FOLLOWING TERMS AND CONDITIONS:

Section 1. EMPLOYMENT OF CONSULTANT.

AGENCY hereby agrees to engage CONSULTANT, and CONSULTANT hereby agrees to perform the services hereinafter set forth, in accordance with all terms and conditions contained herein. CONSULTANT represents that all professional services required hereunder will be performed directly by CONSULTANT, or under direct supervision of CONSULTANT.

Section 2. SCOPE OF SERVICES AND COMPENSATION.

- A. CONSULTANT shall provide services as described in Exhibit "A" entitled "Proposal & Engagement Letter", attached hereto and made a part hereof.
- B. As additional consideration, CONSULTANT and AGENCY agree to abide by the terms and conditions contained in this Agreement.
- C. CONSULTANT will, in a professional manner, furnish all labor and all personnel; all supplies, materials, equipment, printing, vehicles, transportation, office space, and facilities; all testing, analyses, and calculations; and all other means, except as otherwise expressly specified to be furnished by AGENCY, that are necessary or proper to complete the work and provide the required professional services.
- D. CONSULTANT shall be compensated for work completed, not to exceed **\$50,000** for basic services rendered under this Section 2 and all accrued expenses, as more particularly described in Exhibit A. CONSULTANT shall be compensated for additional services only upon prior written approval of AGENCY.
- E. CONSULTANT shall submit a statement of accrued compensation for basic and additional services rendered in accordance with this Agreement and all accrued expenses, not to exceed **\$19,000**, after February 28, 2014 if the 2013 Tax Allocation Bonds are not issued before March 1, 2014. Payments to CONSULTANT will be made by AGENCY within thirty (30) calendar days of receipt of invoice. AGENCY agrees that the CONSULTANT's billings are correct unless AGENCY, within ten (10) calendar days from the date of receipt of such billing, notifies CONSULTANT in writing of alleged inaccuracies, discrepancies, or errors in billing. In the event AGENCY disputes part or all of an invoice, AGENCY shall pay the undisputed portion of the invoice within the above mentioned thirty (30) calendar days.
- F. CONSULTANT shall submit a statement for total accrued compensation for basic and additional services rendered in accordance with this Agreement and all accrued expenses, not to exceed **\$50,000**, if the 2013 Tax Allocation Bonds are issued prior to March 1, 2014. Payments to CONSULTANT will be made by AGENCY thru the 2013 Tax Allocation Bonds Trustee/Escrow Agent and from the proceeds of the 2013 Tax Allocation Bonds within thirty (30) calendar days of receipt of invoice. AGENCY agrees that the CONSULTANT's billings are correct unless AGENCY, within ten (10) calendar days from the date of receipt of such billing, notifies CONSULTANT in writing of alleged inaccuracies, discrepancies, or errors in billing. In the event AGENCY disputes part or all of an invoice, AGENCY shall pay the undisputed portion of the invoice within the above mentioned thirty (30) calendar days from the proceeds of the 2013 Tax Allocation Bonds.

Section 3. PROJECT COORDINATION AND SUPERVISION.

The AGENCY's Treasurer, currently Kathleen VonAchen, is hereby designated as the PROJECT COORDINATOR for AGENCY and will monitor the progress and execution of this Agreement.

Michael Kremer, Senior Vice President of CONSULTANT, is hereby designated as the contact for CONSULTANT and will monitor the progress and execution of this Agreement.

Section 4. LENGTH OF CONTRACT.

The contract between CONSULTANT and AGENCY will be terminated upon completion of the work as set forth in Section 2 above or in accordance with Section 16 below.

Should CONSULTANT begin work on any phase in advance of receiving written authorization to proceed, any professional services performed by CONSULTANT in advance of the said date of authorization shall be considered as having been done at CONSULTANT'S own risk and as a volunteer unless said professional services are so authorized.

Any delay occasioned by causes beyond the control of CONSULTANT may be reason for the granting of extension of time for the completion of the aforesaid services. When such delay occurs, CONSULTANT shall immediately notify the PROJECT COORDINATOR in writing of the cause and the extent of the delay, whereupon the PROJECT COORDINATOR shall ascertain the facts and the extent of the delay and determine whether an extension of time for the completion of the professional services is justified by the circumstances.

Section 5. CHANGES.

If changes in the work seem merited by AGENCY or CONSULTANT, and informal consultations with the other Party indicate that a change is warranted, it shall be processed by AGENCY in the following manner: a letter outlining the changes shall be forwarded to AGENCY by CONSULTANT with a statement of estimated changes in fee or time schedule. An amendment to the Agreement shall be prepared by AGENCY and executed, if approved, by both PARTIES before performance of such services or AGENCY will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

Section 6. OWNERSHIP OF DOCUMENTS.

All documents, data, studies, drawings, maps, models, photographs and reports prepared by CONSULTANT under this Agreement shall be considered the property of AGENCY. CONSULTANT may retain such copies of said documents and materials as desired, but shall deliver all original materials to AGENCY.

Section 7. AUDIT OF RECORDS.

7.1. At any time during normal business hours and as often as may be deemed necessary the CONSULTANT shall make available to a representative of AGENCY for examination all of its records with respect to all matters covered by this Agreement and shall permit AGENCY to audit, examine and/or reproduce such records. CONSULTANT shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2. The CONSULTANT shall include the AGENCY's right under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

Section 8. PUBLICATION OF DOCUMENTS.

Except as necessary for performance of service under this Agreement, no copies, sketches, or graphs of materials, including graphic art work, prepared pursuant to this Agreement shall be released by CONSULTANT to any other person or agency without AGENCY's prior written approval. All press releases, including graphic display information to be published in newspapers or magazines, shall be approved and distributed solely by AGENCY, unless otherwise provided by written agreement.

between the PARTIES. After project completion, CONSULTANT may list the project and the general details in its promotional materials.

Section 9. COVENANT AGAINST CONTINGENT FEES.

CONSULTANT declares that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach of violation of this warranty, AGENCY shall have the right to annul this Agreement without liability, or, at its sole discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

Section 10. NO ASSIGNMENTS.

Neither any part nor all of this Agreement may be assigned or subcontracted, except as otherwise specifically provided herein, or to which AGENCY, in its sole discretion, consents to in advance thereof in writing. Any assignment or subcontracting in violation of this provision shall be void.

Section 11. INDEPENDENT CONTRACTOR.

At all times during the term of this Agreement, CONSULTANT and any subcontractors employed by CONSULTANT shall be an independent contractor and shall not be an employee of the AGENCY. AGENCY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT'S services rendered pursuant to this Agreement; however, AGENCY shall not have the right to control the means by which CONSULTANT accomplishes its services. Any provision in this Agreement that may appear to give AGENCY the right to direct CONSULTANT or sub consultant as to the details of doing the work or to exercise a measure of control over the work means that CONSULTANT shall follow the direction of the AGENCY as to end results of the work only.

Neither CONSULTANT nor CONSULTANT's employees shall in any event be entitled to any benefits to which AGENCY employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, CONSULTANT being solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

Section 12. LICENSES, PERMITS, ETC.

CONSULTANT represents and declares to AGENCY that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. CONSULTANT represents and warrants to AGENCY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for CONSULTANT to practice its profession. CONSULTANT shall obtain and maintain a City of Imperial Beach business license during the term of this Agreement.

Section 13. INSURANCE.

CONSULTANT shall maintain, during the term of this Agreement, Workers' Compensation and Employer's Liability Insurance as prescribed by applicable law. Upon request, AGENCY shall be provided with satisfactory evidence that premiums have been paid and CONSULTANT shall deliver to AGENCY certificates of insurance and endorsements as to each policy. Each certificate of insurance

shall provide that the policy will not be materially altered or cancelled without first giving ten (10) calendar days written notice to the AGENCY by certified mail. Coverage shall include appropriate waivers of subrogation as to the City of Imperial Beach (the "City") and AGENCY. CONSULTANT agrees to this requirement irrespective of any other similar obligation imposed on others and CONSULTANT agrees to do so in conformity with the requirements set forth herein including those requirements set forth for certificates of insurance.

CONSULTANT shall assume liability for the wrongful or negligent acts, errors and omissions of its officers, agents and employees and sub Contractors in regard to any functions or activity carried out by them on behalf of AGENCY pursuant to the terms of this Agreement.

Section 14. CONSULTANT NOT AN AGENT.

Except as AGENCY may specify in writing, CONSULTANT shall have no authority, expressed or implied, to act on behalf of AGENCY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, expressed or implied, pursuant to this Agreement to bind AGENCY to any obligation whatsoever.

Section 15. INDEMNITY.

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend, and hold harmless the AGENCY, the City, and their officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the active or sole negligence or willful misconduct by the AGENCY, the City or their elected officials, officers, agents, and employees. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this AGREEMENT. The PARTIES expressly agree that any payment, attorney's fees, costs or expense AGENCY or the City incurs or makes to or on behalf of an injured employee under the AGENCY's or City's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this AGREEMENT.

Section 16. TERMINATION.

AGENCY may terminate this Agreement at any time by giving ten (10) calendar days' written notice to CONSULTANT of such termination and specifying the effective date thereof at least ten (10) calendar days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials prepared by CONSULTANT shall, at the option of AGENCY, become the property of AGENCY. If this Agreement is terminated by AGENCY as provided herein, CONSULTANT will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of CONSULTANT covered by this Agreement, less payments of compensation previously made.

Should CONSULTANT be in default of any covenant or condition hereof, AGENCY may immediately terminate this AGREEMENT for cause if CONSULTANT fails to cure the default within ten (10) calendar days of receiving written notice of the default.

Section 17. NON-DISCRIMINATION.

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, nor shall CONSULTANT discriminate against any qualified individual with a disability. CONSULTANT will take affirmative action to insure that

applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by AGENCY setting forth the provisions of this non-discrimination clause.

Section 18. GENERAL CONDITIONS.

CONSULTANT agrees that it shall provide no services for any private client within the boundaries of AGENCY during the period that this Agreement is in effect, nor shall CONSULTANT, without, previous written permission from the PROJECT COORDINATOR, review any plan, map or other work which to the best of CONSULTANTS knowledge has been submitted by a private client for which the CONSULTANT has performed work within the previous 12 months or anticipates performing work in the succeeding 12 months. CONSULTANT shall immediately notify the PROJECT COORDINATOR in writing whenever CONSULTANT has reason to believe that aforementioned circumstance exists. CONSULTANT knows of no interests where it holds nor of any relationship it has or may have that would constitute a conflict of CONSULTANT performing the duties set forth in this Agreement solely in the best interest of CITY.

Section 19. OFFICE SPACE AND CLERICAL SUPPORT.

CONSULTANT shall provide its own office space and clerical support at its sole cost and expense.

Section 20. SUBCONTRACTORS.

20.1. The CONSULTANT's hiring or retaining of third parties (i.e. subcontractors) to perform services related to this Agreement is subject to prior approval by the AGENCY.

20.2. All contracts entered into between the CONSULTANT and its subcontractor shall also provide that each subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work related to this Agreement and for the duration of this Agreement. The CONSULTANT shall require the subcontractor to obtain all policies described in Section 13 above in the amounts required by the AGENCY, which shall not be greater than the amounts required of the CONSULTANT.

20.3. In any dispute between the CONSULTANT and its subcontractor, the AGENCY or the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The CONSULTANT agrees to defend and indemnify the AGENCY and the City as described in Section 15 of this Agreement should the AGENCY or the City be made a party to any judicial or administrative proceeding to resolve any such dispute.

Section 21. CONFIDENTIAL RELATIONSHIP.

AGENCY may from time to time communicate to CONSULTANT certain information to enable CONSULTANT to effectively perform the services. CONSULTANT shall treat all such information as confidential, whether or not so identified, and shall not disclose any part thereof without the prior written consent of AGENCY. CONSULTANT shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services. The foregoing obligation of this Section 21, however, shall not apply to any part of the information that (i) has been

disclosed in publicly available sources of information (ii) is, through no fault of CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is now in the possession of CONSULTANT without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

CONSULTANT shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this contract without the prior written consent of AGENCY. In its performance hereunder, CONSULTANT shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

Section 22. MEDIATION.

In the event of a dispute between AGENCY and CONSULTANT concerning the terms of this Agreement or its performance, the PARTIES may, but are not required to, agree to submit such dispute to mediation. If both PARTIES agree to mediation, AGENCY and CONSULTANT agree to cooperate in good faith to promptly select a mediator, to schedule a mediation session, and to attempt to settle the claim or dispute through mediation.

Section 23. NOTICES.

All communications to either Party by the other Party shall be deemed made when received by such Party at its respective name and address, as follows:

Kathleen VonAchen
Treasurer
Imperial Beach Redevelopment Agency Successor Agency
825 Imperial Beach Blvd.
Imperial Beach, CA 91932

Michael Kremer
Sr. Vice President
First Southwest Company
1620 26th Street, Ste. 230 South
Santa Monica, CA 90404

Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) business days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above.

Section 24. CALIFORNIA LAW; VENUE.

This Agreement and its performance shall be governed, interpreted, construed, and regulated by the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. CONSULTANT hereby waives any and all rights it might have pursuant to California Code of Civil Procedure § 394.

Section 25. ENTIRE AGREEMENT.

This Agreement, and its Attachments and Exhibits, set forth the entire understanding of the PARTIES. There are no other understandings, terms or other agreements expressed or implied, oral or written. The following attachments are a part of this Agreement: **Request for Qualifications/Proposal and Proposal dated March 21, 2013**. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the PARTIES, their officers, agents, or employees shall be valid unless agreed to in writing by both PARTIES.

Section 26. SEVERABILITY.

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement shall continue in full force and effect.

Section 27. TIME IS OF ESSENCE.

Time is of the essence for each and every provision of this Agreement that states a time for performance and for every deadline imposed by the PROJECT COORDINATOR.

Section 28. COMPLIANCE WITH LAW.

CONSULTANT shall comply with applicable laws in effect at the time the services are performed hereunder which, to the best of its knowledge, information and belief, apply to its obligations under this Agreement.

Section 29. STATEMENT OF EXPERIENCE.

By executing this Agreement, CONSULTANT represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the Agreement in a manner satisfactory to AGENCY. CONSULTANT represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private owners, and experience in dealing with public agencies all suggest that CONSULTANT is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public agency.

Section 30. CONFLICTS OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.

During the term of this Agreement, CONSULTANT shall not act as consultant or perform services of any kind for any person or entity whose interests conflict in any way with those of the AGENCY. CONSULTANT shall at all times comply with the terms of the Political Reform Act and the local conflict of interest ordinance. CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the AGENCY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. CONSULTANT represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the AGENCY.

CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act and local ordinance. Specifically, CONSULTANT shall file Statements of Economic Interest with the City Clerk of the City of Imperial Beach in a timely manner on forms which CONSULTANT shall obtain from the City Clerk.

Section 31. RESPONSIBILITY FOR EQUIPMENT.

AGENCY or the City shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by CONSULTANT or any of CONSULTANT's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to CONSULTANT by AGENCY or the City. The acceptance or use of any such equipment by CONSULTANT, CONSULTANT's employees, or subcontractors shall be construed to mean that CONSULTANT accepts full responsibility for and agrees to exonerate, indemnify and hold harmless AGENCY and the City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

Section 32. NO WAIVER.

No failure of either the AGENCY or the CONSULTANT to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

Section 33. DRAFTING AMBIGUITIES.

The PARTIES agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

Section 34. CONFLICTS BETWEEN TERMS.

If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

Section 35. EXHIBITS INCORPORATED.

Exhibits "A" is incorporated into the Agreement by this reference.

Section 36. SIGNING AUTHORITY.

The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party hereto harmless if it is later determined that such authority does not exist.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF the PARTIES hereto have executed this Agreement on the day and year first hereinabove written.

AGENCY:

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY,
a public entity

CONSULTANT:

FIRST SOUTHWEST COMPANY,
a California _____

Gary Brown, Executive Director

Michael Kremer, Sr. Vice President

APPROVED AS TO CONTENT:

Kathleen VonAchen, Treasurer/
Administrative Services Director

APPROVED AS TO FORM:

Jennifer M. Lyon, General Counsel



1620 26th Street
Suite 230 South
Santa Monica, CA 90404

310.401.8052 Direct
310.722.2615 Cell
310.401.8055 Fax

Michael Kremer
Senior Vice President

michael.kremer@firstsw.com

March 21, 2013

Ms. Kathleen VonAchen
Administrative Services Director
City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 91932

Dear Kathleen:

On behalf of First Southwest Company ("FirstSouthwest"), we appreciate the opportunity to provide financial advisory services to the Imperial Beach Redevelopment Agency Successor Agency (the "Successor Agency") for its anticipated negotiated, public sale of approximately \$18 million of Property Tax Revenue Refunding Bonds, Series 2013 (the "Refunding Bonds") for the purpose of refunding the Series 2003A Tax Allocation Bonds (the "2003A TABs").

Background

The proceeds of the Successor Agency's Refunding Bonds are expected to fund a 30-day escrow to currently refund the \$17.965 million of principal outstanding on the 2003A TABs, fund a deposit to the debt service reserve fund and pay all financing costs. The Refunding Bonds are currently scheduled to close in September 2013, following required authorizations by the Successor Agency, Oversight Board and State Department of Finance.

Based on interest rates as of March 8, 2013 and the assignment of an underlying "A" rating to the Refunding Bonds by Standard & Poor's, the savings from refunding the 2003A TABs are projected at \$310,000 annually from fiscal year 2014-2033, aggregating to \$6.2 million, and equivalent to net present value savings of \$4.30 million (23.9% of refunded par).

Scope of Services

The items on the following page comprise the scope of services proposed for this engagement (collectively, the "Scope of Services"). The total estimated cost is \$51,750 based on 230 hours at \$225 per hour.

	Service Provided	Estimated Time (hrs)	Estimated Cost
1)	Review the relevant financing documents from the 2003A and 2010 TABs transactions, the Successor Agency's Recognized Obligation Payment Schedules (ROPS) and other correspondence by and between the Oversight Board and the Dept. of Finance.	10	\$2,250
2)	Develop a financing plan for the Refunding Bonds, considering the procedures, timelines, and necessary authorizations of the Oversight Board, Dept. of Finance and other stakeholders.	20	\$4,500
3)	Reflecting assumptions relating to assumed credit ratings and current market conditions, prepare and periodically update bond sizings for the Refunding Bonds, showing projected annual, total and net present value savings.	10	\$2,250
4)	Prepare and maintain the financing schedule and working group list.	5	\$1,125
5)	Provide updates to the Successor Agency and the working group on the status of the financing, and coordinate and participate on all working group meetings/conference calls.	15	\$3,375
6)	Attend meetings and make presentations at the request of the Successor Agency.	20	\$4,500
7)	Work with the fiscal consultant to produce historical and projected annual financial results of the RPTTF for use in calculating debt service coverage for the Refunding Bonds and other obligations. Confirm Successor Agency compliance with relevant bond covenants.	10	\$2,250
8)	Develop strategies for optimizing credit ratings and maximizing opportunities for cost-effective credit enhancement, including preparing credit presentations.	40	\$9,000
9)	Review and comment on financing documents and reports prepared for the Refunding Bonds.	25	\$5,625
10)	Prepare and distribute the RFP for Investment Banking Services, review RFP responses, manage the oral interview process and advise on selection.	30	\$6,750
11)	Assist in negotiating all terms of a negotiated public sale, including interest rate levels, underwriter's compensation, redemption features and syndicate policies.	10	\$2,250
12)	Secure competitive bids or quotes for financing team members such as verification agents and financial printers, as requested by the SA.	5	\$1,125
13)	Provide general market updates and information from comparable transactions.	10	\$2,250
14)	Facilitate the investment of bond proceeds, as necessary.	5	\$1,125
15)	Coordinate the closing of the Refunding Bonds.	5	\$1,125
16)	Miscellaneous	10	\$2,250
	TOTAL	230	\$51,750

Compensation and Duration

In consideration for providing the Scope of Services, FirstSouthwest proposes to charge a blended hourly rate of \$225 for all professional staff time (no charge for administrative staff time). Our total compensation would be subject to a not-to-exceed amount of \$50,000, with payment of accrued compensation to be from the proceeds of the Refunding Bonds. However, if the Refunding Bonds are

not issued by February 28, 2014, FirstSouthwest's accrued compensation will be due and payable, subject to a not-to-exceed amount of \$19,000, from available funds of the Successor Agency.

The Successor Agency's payment of FirstSouthwest's accrued expenses will be limited to conference calls and travel undertaken at the request of the Successor Agency, and will not be subject to any dollar amount limitation nor be contingent upon the issuance of the Refunding Bonds.

This engagement shall begin upon your written acceptance below and shall remain in effect until (i) the issuance of the Refunding Bonds or (ii) the engagement is terminated by either party upon giving of at least thirty (30) days' prior written notice to the other party of its intention to terminate, specifying in such notice the effective date of such termination. In the event of such termination, it is understood and agreed that only the compensation and expenses incurred to the date of termination will be due and payable.


Miscellaneous

The Successor Agency and FirstSouthwest acknowledge and agree that:

- In any event regardless of the cause of action, FirstSouthwest's total liability (including loss and expense) to the Successor Agency in the aggregate shall not exceed the gross amount of compensation received by FirstSouthwest pursuant to this letter agreement. The limitations of liability set forth in this letter agreement are fundamental elements of the basis of the bargain between FirstSouthwest and the Successor Agency, and the pricing of the services set forth above reflect such limitations.
- This letter agreement shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be fully performed therein.

Please acknowledge acceptance of these terms by signing in the space provided below and returning two copies to me.

Sincerely,

By: 
Michael D. Kremer
Senior Vice President

Agreed and Accepted:

By: _____

Title: _____

Name: _____

Date: _____

RESOLUTION NO. SA-13-25

A RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING, AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE, A PROFESSIONAL SERVICES AGREEMENT WITH JONES HALL FOR BOTH BOND AND DISCLOSURE COUNSEL SERVICES RELATING TO THE POTENTIAL REFUNDING OF THE SERIES 2003A TAX ALLOCATION BONDS

WHEREAS, the Imperial Beach Redevelopment Agency ("Redevelopment Agency") was a redevelopment agency in the City of Imperial Beach ("City"), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) ("Redevelopment Law"); and

WHEREAS, the City Council has adopted redevelopment plans for Imperial Beach's redevelopment project areas, and from time to time, the City Council has amended such redevelopment plans; and

WHEREAS, the Redevelopment Agency was responsible for the administration of redevelopment activities within the City; and

WHEREAS, Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.) ("AB 26") was signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law and the California Health and Safety Code ("Health and Safety Code"), including adding Part 1.8 (commencing with Section 34161) ("Part 1.8") and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the Health and Safety Code; and

WHEREAS, pursuant to AB 26, as modified by the California Supreme Court on December 29, 2011 by its decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment Agency, were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and expeditiously winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85 of AB 26, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 ("Successor Agency"); and

WHEREAS, on February 15, 2012, the Board of Directors of the Successor Agency, adopted Resolution No. SA-12-01 naming itself the "Imperial Beach Redevelopment Agency Successor Agency," the sole name by which it will exercise its powers and fulfill its duties pursuant to Part 1.85 of AB 26, and establishing itself as a separate legal entity with rules and regulations that will apply to the governance and operations of the Successor Agency; and

WHEREAS, as part of the FY 2012-2013 State budget package, on June 27, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012). Although the primary purpose of AB 1484 was to make technical and substantive amendments to AB 26 based on issues that have arisen in the implementation of AB 26, AB 1484 imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind down process of former redevelopment agencies, including without limitation refunding or refinancing bonds or other indebtedness; and

WHEREAS, Health and Safety Code Section 34179 of AB 26 as amended by AB 1484 (collectively the "Dissolution Act") establishes a seven (7) member local entity with respect to each successor agency and such entity is titled the "oversight board." The oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of the Dissolution Act; and

WHEREAS, pursuant to Health and Safety Code Section 34179.7 of the Dissolution Act, the California Department of Finance ("DOF") has issued a Finding of Completion to the Successor Agency; and

WHEREAS, on December 11, 2003, the former Redevelopment Agency and the Imperial Beach Public Financing Authority (the "Financing Authority"), a Joint Powers Authority of the City of Imperial Beach (the "City") and the former Redevelopment Agency, issued Tax Allocation Revenue Bonds, Series 2003A (the "Series 2003A TABs") secured by the former Redevelopment Agency's tax increment revenues as funding for the debt service obligations. The Series 2003A TABs were issued in order to finance redevelopment activities relating to improvements within the Original and Amended Redevelopment Project Areas ("Project Areas") including street improvements, public park capital improvements, construction of community facilities, and landscaping improvements, among others; and

WHEREAS, debt service on the Series 2003A TABs has been and is repaid solely with tax increment revenues generated within the Project Areas. As of June 5, 2013, the Series 2003A TABs are outstanding in the amount of \$17,965,000, with annual principal maturities ranging from June 1, 2014 through June 1, 2033. These principal bond maturities can be prepaid on December 1, 2013, and on any subsequent date thereafter, without a prepayment penalty. The Series 2003A TABs have interest rates ranging from 5.00% to 6.00%; and

WHEREAS, pursuant to the Dissolution Act, the Successor Agency may cause the refinancing or refunding of the Series 2003A TABs for debt service savings by issuing, or causing the issuance, of Property Tax Revenue Refunding Bonds (the "Refunding Bonds") in accordance with the Dissolution Act including, without limitation, Sections 34177.5 and 34180(b); and

WHEREAS, based on interest rates in the current market, refunding the Series 2003A TABs is projected to achieve annual debt service savings for the Successor Agency of an average of \$295,000 from fiscal year 2013-14 through 2032-33, and for a total of \$5.93 million. Accounting for the time value of money, the discounted present value savings are \$4.03 million, which is equivalent to 22.44% of the \$17,965,000 of the Series 2003A TABs to be refunded; and

WHEREAS, the Successor Agency desires to take advantage of the current low interest rate environment in order to minimize its total interest costs on outstanding debt by refinancing/refunding the Series 2003A TABs at a comparatively lower interest rate than the current bond issue's average bond coupon rate and as low of a cost of issuance as possible; and

WHEREAS, in order to effectuate the refunding of the Series 2003A TABs, the Successor Agency desires to retain the services of Jones Hall for both bond and disclosure counsel services, including without limitation the following: to provide a legal opinion confirming that the issuer is authorized to issue proposed securities, the issuer has met all legal requirements necessary for issuance, and interest on the proposed securities will be exempt from federal income taxation and, where applicable, from state and local taxation; to prepare, or

review and advise the issuer regarding, authorizing resolutions, ordinances, trust indentures, official statements, validation proceedings and litigation; and to prepare the Official Statement, the Bond Purchase Contract, the Continuing Disclosure Agreement, and any Blue Sky Memoranda in connection with the Refunding Bonds; and

WHEREAS, Jones Hall has represented that it possesses the necessary qualifications to provide the services required by the Successor Agency; and

WHEREAS, the Successor Agency staff has authorized the preparation of a Professional Services Agreement (the "Agreement") to retain the services of Jones Hall as a "Bond Counsel" and "Disclosure Counsel" to the Successor Agency and recommends the Successor Agency's approval relating to same; and

WHEREAS, pursuant to the Agreement, subject to the below, Jones Hall shall be compensated for work completed, not to exceed \$88,706 for basic services rendered under the Agreement and not to exceed \$2,500 for all accrued out-of-pocket expenses. Jones Hall would be compensated for additional services only upon prior written approval of the Successor Agency. According to the Agreement, payment to Jones Hall for all compensation not to exceed \$88,706 and accrued expenses not to exceed \$2,500 will be made by the Successor Agency on a contingency basis dependent on the final sale and close of the Refunding Bonds thru the Trustee/Escrow Agent from the proceeds of the Refunding Bonds within thirty (30) calendar days of receipt of invoice; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the Imperial Beach Redevelopment Agency Successor Agency, as follows:

- Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Successor Agency hereby approves the Professional Services Agreement ("Agreement") with Jones Hall in substantial form as the Agreement attached as Exhibit "A", for both bond and disclosure counsel services for a total amount not to exceed \$88,706 for all basic services rendered under the Agreement and not to exceed \$2,500 for all accrued out-of-pocket expenses, payment to Jones Hall will be made by the Successor Agency on a contingency basis dependent on the final sale and close of the Refunding Bonds thru the Trustee/Escrow Agent from the proceeds of the Refunding Bonds.
- Section 3.** The Executive Director, or designee, of the Successor Agency is hereby authorized and directed to execute the Agreement in substantial form as the Agreement attached as Exhibit "A", subject to the Oversight Board's approval of the Agreement as required by the Dissolution Act or desired by the Executive Director.
- Section 4.** The Executive Director, or designee, of the Successor Agency is hereby authorized to make non-substantive changes and amendments to the Agreement deemed necessary and as approved by the Executive Director of the Successor Agency and its legal counsel and to take such other actions and execute such other documents as are necessary to

effectuate the intent of this Resolution on behalf of the Successor Agency.

Section 5. The Successor Agency determines that the activity approved by this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per Section 15378(b)(5) of the Guidelines.

Section 6. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Successor Agency declares that its board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 7. This Resolution shall take effect upon the date of its adoption

PASSED, APPROVED, AND ADOPTED by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 5th day of June 2013, by the following vote:

AYES:	BOARD MEMBERS:
NOES:	BOARD MEMBERS:
ABSENT:	BOARD MEMBERS:

JAMES C. JANNEY
CHAIRPERSON

ATTEST:

 /s/
JACQUELINE M. HALD, MMC
SECRETARY



EXHIBIT "B"
Imperial Beach Redevelopment Agency Successor Agency
AGREEMENT FOR PROFESSIONAL SERVICES

FOR BOND COUNSEL AND DISCLOSURE COUNSEL SERVICES RELATED TO THE
POSSIBLE REFUNDING OF THE 2003A TAX ALLOCATION BONDS

This Agreement, entered into this 6th day of June, 2013, by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, a public entity (hereinafter referred to as "AGENCY"), and JONES HALL, a California professional law corporation (hereinafter referred to as "CONSULTANT"), (collectively "PARTIES").

RECITALS

WHEREAS, AGENCY desires to take advantage of the current low interest rate environment in order to minimize its total interest costs on outstanding debt by refunding its Series 2003A Tax Allocation Bonds at a comparatively lower interest rates than the current bond issue's average bond coupon rate and at as low a cost of issuance as possible; and

WHEREAS, AGENCY desires to retain bond counsel and disclosure counsel to provide a legal opinion confirming that the AGENCY is authorized to issue proposed securities and has met all legal requirements necessary for issuance and that interest on the proposed securities will be exempt from federal income taxation and, where applicable, from state and local taxation; and

WHEREAS, AGENCY desires to retain bond counsel and disclosure counsel to prepare and advise the AGENCY regarding authorizing resolutions, ordinances, trust indentures, official statements, validation proceedings and litigation; and

WHEREAS, AGENCY desires to retain bond counsel and disclosure counsel to prepare the Official Statement, the Bond Purchase Contract (or the Official Notice of Sale for a competitive sale), the Continuing Disclosure Agreement and any Blue Sky Memoranda; and

WHEREAS, the Official Statement is the primary and official source of material information about the AGENCY and the securities in the transaction is an integral part of a successful bond issuance process; and

WHEREAS, AGENCY has authorized the preparation of an Agreement to retain the services of CONSULTANT as hereinafter set forth;

NOW, THEREFORE, IT IS MUTUALLY AGREED BY THE PARTIES THAT AGENCY DOES HEREBY RETAIN CONSULTANT ON THE FOLLOWING TERMS AND CONDITIONS:

Section 1. EMPLOYMENT OF CONSULTANT.

AGENCY hereby agrees to engage CONSULTANT, and CONSULTANT hereby agrees to perform the services hereinafter set forth, in accordance with all terms and conditions contained herein. CONSULTANT represents that all professional services required hereunder will be performed directly by CONSULTANT, or under direct supervision of CONSULTANT.

Section 2. SCOPE OF SERVICES AND COMPENSATION.

- A. CONSULTANT shall provide services as described in Exhibit "A" entitled "Proposal & Engagement Letter", attached hereto and made a part hereof.
- B. As additional consideration, CONSULTANT and AGENCY agree to abide by the terms and conditions contained in this Agreement.
- C. CONSULTANT will, in a professional manner, furnish all labor and all personnel; all supplies, materials, equipment, printing, vehicles, transportation, office space, and facilities; all testing, analyses, and calculations; and all other means, except as otherwise expressly specified to be furnished by AGENCY, that are necessary or proper to complete the work and provide the required professional services.
- D. CONSULTANT shall be compensated for work completed, not to exceed **\$88,706** for basic bond and disclosure counsel services rendered under this Section 2 and **\$2,500** for out-of-pocket expenses, both of which as more particularly described in Exhibit A. CONSULTANT shall be compensated for additional services only upon prior written approval of AGENCY.
- E. CONSULTANT shall submit a statement for total accrued compensation for basic and additional services rendered in accordance with this Agreement and all accrued expenses. Payments to CONSULTANT for all compensation and accrued expenses will be made by AGENCY on a contingency basis dependent on the final sale and close of the 2013 Tax Allocation Bonds thru the Trustee/Escrow Agent from the proceeds of the 2013 Tax Allocation Bonds within thirty (30) calendar days of receipt of invoice. AGENCY agrees that the CONSULTANT's billings are correct unless AGENCY, within ten (10) calendar days from the date of receipt of such billing, notifies CONSULTANT in writing of alleged inaccuracies, discrepancies, or errors in billing. In the event AGENCY disputes part or all of an invoice, AGENCY shall pay the undisputed portion of the invoice within the above mentioned thirty (30) calendar days from the proceeds of the 2013 Tax Allocation Bonds.

Section 3. PROJECT COORDINATION AND SUPERVISION.

The AGENCY's Treasurer, currently Kathleen VonAchen, is hereby designated as the PROJECT COORDINATOR for AGENCY and will monitor the progress and execution of this Agreement.

David T. Fama, principal attorney for CONSULTANT, is hereby designated as the contact for CONSULTANT and will monitor the progress and execution of this Agreement.

Section 4. LENGTH OF CONTRACT.

The contract between CONSULTANT and AGENCY will be terminated upon completion of the work as set forth in Section 2 above or in accordance with Section 16 below.

Should CONSULTANT begin work on any phase in advance of receiving written authorization to proceed, any professional services performed by CONSULTANT in advance of the said date of authorization shall be considered as having been done at CONSULTANT'S own risk and as a volunteer unless said professional services are so authorized.

Any delay occasioned by causes beyond the control of CONSULTANT may be reason for the granting of extension of time for the completion of the aforesaid services. When such delay occurs, CONSULTANT shall immediately notify the PROJECT COORDINATOR in writing of the cause and

the extent of the delay, whereupon the PROJECT COORDINATOR shall ascertain the facts and the extent of the delay and determine whether an extension of time for the completion of the professional services is justified by the circumstances.

Section 5. CHANGES.

If changes in the work seem merited by AGENCY or CONSULTANT, and informal consultations with the other Party indicate that a change is warranted, it shall be processed by AGENCY in the following manner: a letter outlining the changes shall be forwarded to AGENCY by CONSULTANT with a statement of estimated changes in fee or time schedule. An amendment to the Agreement shall be prepared by AGENCY and executed, if approved, by both PARTIES before performance of such services or AGENCY will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

Section 6. OWNERSHIP OF DOCUMENTS.

All documents, data, studies, drawings, maps, models, photographs and reports prepared by CONSULTANT under this Agreement shall be considered the property of AGENCY. CONSULTANT may retain such copies of said documents and materials as desired, but shall deliver all original materials to AGENCY.

Section 7. AUDIT OF RECORDS.

7.1. At any time during normal business hours and as often as may be deemed necessary the CONSULTANT shall make available to a representative of AGENCY for examination all of its records with respect to all matters covered by this Agreement and shall permit AGENCY to audit, examine and/or reproduce such records. CONSULTANT shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2. The CONSULTANT shall include the AGENCY's right under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

Section 8. PUBLICATION OF DOCUMENTS.

Except as necessary for performance of service under this Agreement, no copies, sketches, or graphs of materials, including graphic art work, prepared pursuant to this Agreement shall be released by CONSULTANT to any other person or agency without AGENCY's prior written approval. All press releases, including graphic display information to be published in newspapers or magazines, shall be approved and distributed solely by AGENCY, unless otherwise provided by written agreement between the PARTIES. After project completion, CONSULTANT may list the project and the general details in its promotional materials.

Section 9. COVENANT AGAINST CONTINGENT FEES.

CONSULTANT declares that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach of violation of this warranty, AGENCY shall have the right to annul this Agreement without liability, or, at its sole discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

Section 10. NO ASSIGNMENTS.

Neither any part nor all of this Agreement may be assigned or subcontracted, except as otherwise specifically provided herein, or to which AGENCY, in its sole discretion, consents to in advance thereof in writing. Any assignment or subcontracting in violation of this provision shall be void.

Section 11. INDEPENDENT CONTRACTOR.

At all times during the term of this Agreement, CONSULTANT and any subcontractors employed by CONSULTANT shall be an independent contractor and shall not be an employee of the AGENCY. AGENCY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT'S services rendered pursuant to this Agreement; however, AGENCY shall not have the right to control the means by which CONSULTANT accomplishes its services. Any provision in this Agreement that may appear to give AGENCY the right to direct CONSULTANT or sub consultant as to the details of doing the work or to exercise a measure of control over the work means that CONSULTANT shall follow the direction of the AGENCY as to end results of the work only.

Neither CONSULTANT nor CONSULTANT's employees shall in any event be entitled to any benefits to which AGENCY employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, CONSULTANT being solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

Section 12. LICENSES, PERMITS, ETC.

CONSULTANT represents and declares to AGENCY that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. CONSULTANT represents and warrants to AGENCY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for CONSULTANT to practice its profession. CONSULTANT shall obtain and maintain a City of Imperial Beach business license during the term of this Agreement.

Section 13. INSURANCE.

CONSULTANT shall maintain, during the term of this Agreement, Workers' Compensation and Employer's Liability Insurance as prescribed by applicable law. Upon request, AGENCY shall be provided with satisfactory evidence that premiums have been paid and CONSULTANT shall deliver to AGENCY certificates of insurance and endorsements as to each policy. Each certificate of insurance shall provide that the policy will not be materially altered or cancelled without first giving ten (10) calendar days written notice to the AGENCY by certified mail. Coverage shall include appropriate waivers of subrogation as to the City of Imperial Beach (the "City") and AGENCY. CONSULTANT agrees to this requirement irrespective of any other similar obligation imposed on others and CONSULTANT agrees to do so in conformity with the requirements set forth herein including those requirements set forth for certificates of insurance.

CONSULTANT shall assume liability for the wrongful or negligent acts, errors and omissions of its officers, agents and employees and sub Contractors in regard to any functions or activity carried out by them on behalf of AGENCY pursuant to the terms of this Agreement.

Section 14. CONSULTANT NOT AN AGENT.

Except as AGENCY may specify in writing, CONSULTANT shall have no authority, expressed or implied, to act on behalf of AGENCY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, expressed or implied, pursuant to this Agreement to bind AGENCY to any obligation whatsoever.

Section 15. INDEMNITY.

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend, and hold harmless the AGENCY, the City, and their officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the active or sole negligence or willful misconduct by the AGENCY, the City or their elected officials, officers, agents, and employees. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this AGREEMENT. The PARTIES expressly agree that any payment, attorney's fees, costs or expense AGENCY or the City incurs or makes to or on behalf of an injured employee under the AGENCY's or City's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this AGREEMENT.

Section 16. TERMINATION.

AGENCY may terminate this Agreement at any time by giving ten (10) calendar days' written notice to CONSULTANT of such termination and specifying the effective date thereof at least ten (10) calendar days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials prepared by CONSULTANT shall, at the option of AGENCY, become the property of AGENCY. If this Agreement is terminated by AGENCY as provided herein, CONSULTANT will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of CONSULTANT covered by this Agreement, less payments of compensation previously made.

Should CONSULTANT be in default of any covenant or condition hereof, AGENCY may immediately terminate this AGREEMENT for cause if CONSULTANT fails to cure the default within ten (10) calendar days of receiving written notice of the default.

Section 17. NON-DISCRIMINATION.

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, nor shall CONSULTANT discriminate against any qualified individual with a disability. CONSULTANT will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by AGENCY setting forth the provisions of this non-discrimination clause.

Section 18. GENERAL CONDITIONS.

CONSULTANT agrees that it shall provide no services for any private client within the boundaries of AGENCY during the period that this Agreement is in effect, nor shall CONSULTANT, without, previous written permission from the PROJECT COORDINATOR, review any plan, map or other work which to the best of CONSULTANTS knowledge has been submitted by a private client for which the CONSULTANT has performed work within the previous 12 months or anticipates performing work in the succeeding 12 months. CONSULTANT shall immediately notify the PROJECT COORDINATOR in writing whenever CONSULTANT has reason to believe that aforementioned circumstance exists. CONSULTANT knows of no interests where it holds nor of any relationship it has or may have that would constitute a conflict of CONSULTANT performing the duties set forth in this Agreement solely in the best interest of CITY.

Section 19. OFFICE SPACE AND CLERICAL SUPPORT.

CONSULTANT shall provide its own office space and clerical support at its sole cost and expense.

Section 20. SUBCONTRACTORS.

20.1. The CONSULTANT's hiring or retaining of third parties (i.e. subcontractors) to perform services related to this Agreement is subject to prior approval by the AGENCY.

20.2. All contracts entered into between the CONSULTANT and its subcontractor shall also provide that each subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work related to this Agreement and for the duration of this Agreement. The CONSULTANT shall require the subcontractor to obtain all policies described in Section 13 above in the amounts required by the AGENCY, which shall not be greater than the amounts required of the CONSULTANT.

20.3. In any dispute between the CONSULTANT and its subcontractor, the AGENCY or the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The CONSULTANT agrees to defend and indemnify the AGENCY and the City as described in Section 15 of this Agreement should the AGENCY or the City be made a party to any judicial or administrative proceeding to resolve any such dispute.

Section 21. CONFIDENTIAL RELATIONSHIP.

AGENCY may from time to time communicate to CONSULTANT certain information to enable CONSULTANT to effectively perform the services. CONSULTANT shall treat all such information as confidential, whether or not so identified, and shall not disclose any part thereof without the prior written consent of AGENCY. CONSULTANT shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services. The foregoing obligation of this Section 21, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information (ii) is, through no fault of CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is now in the possession of CONSULTANT without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

CONSULTANT shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this contract without the prior written consent

of AGENCY. In its performance hereunder, CONSULTANT shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

Section 22. MEDIATION.

In the event of a dispute between AGENCY and CONSULTANT concerning the terms of this Agreement or its performance, the PARTIES may, but are not required to, agree to submit such dispute to mediation. If both PARTIES agree to mediation, AGENCY and CONSULTANT agree to cooperate in good faith to promptly select a mediator, to schedule a mediation session, and to attempt to settle the claim or dispute through mediation.

Section 23. NOTICES.

All communications to either Party by the other Party shall be deemed made when received by such Party at its respective name and address, as follows:

Kathleen VonAchen
Treasurer
Imperial Beach Redevelopment Agency
Successor Agency
825 Imperial Beach Blvd.
Imperial Beach, CA 91932

David T. Fama
Attorney at Law
Jones Hall, A Professional Law Corp.
650 California Street, 18th Floor
San Francisco, CA 94108

Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) business days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above.

Section 24. CALIFORNIA LAW; VENUE.

This Agreement and its performance shall be governed, interpreted, construed, and regulated by the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. CONSULTANT hereby waives any and all rights it might have pursuant to California Code of Civil Procedure § 394.

Section 25. ENTIRE AGREEMENT.

This Agreement, and its Attachments and Exhibits, set forth the entire understanding of the PARTIES. There are no other understandings, terms or other agreements expressed or implied, oral or written. The following attachments are a part of this Agreement: **Bond/Disclosure Counsel Proposal dated May 28, 2013**. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the PARTIES, their officers, agents, or employees shall be valid unless agreed to in writing by both PARTIES.

Section 26. SEVERABILITY.

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement shall continue in full force and effect.

Section 27. TIME IS OF ESSENCE.

Time is of the essence for each and every provision of this Agreement that states a time for performance and for every deadline imposed by the PROJECT COORDINATOR.

Section 28. COMPLIANCE WITH LAW.

CONSULTANT shall comply with applicable laws in effect at the time the services are performed hereunder which, to the best of its knowledge, information and belief, apply to its obligations under this Agreement.

Section 29. STATEMENT OF EXPERIENCE.

By executing this Agreement, CONSULTANT represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the Agreement in a manner satisfactory to AGENCY. CONSULTANT represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private owners, and experience in dealing with public agencies all suggest that CONSULTANT is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public agency.

Section 30. CONFLICTS OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.

During the term of this Agreement, CONSULTANT shall not act as consultant or perform services of any kind for any person or entity whose interests conflict in any way with those of the AGENCY. CONSULTANT shall at all times comply with the terms of the Political Reform Act and the local conflict of interest ordinance. CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the AGENCY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. CONSULTANT represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the AGENCY.

CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act and local ordinance. Specifically, CONSULTANT shall file Statements of Economic Interest with the City Clerk of the City of Imperial Beach in a timely manner on forms which CONSULTANT shall obtain from the City Clerk.

Section 31. RESPONSIBILITY FOR EQUIPMENT.

AGENCY or the City shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by CONSULTANT or any of CONSULTANT's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to CONSULTANT by AGENCY or the City. The acceptance or use of any such equipment by CONSULTANT, CONSULTANT's employees, or subcontractors shall be construed to mean that CONSULTANT accepts full responsibility for and agrees to exonerate, indemnify and hold harmless AGENCY and the City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

Section 32. NO WAIVER.

No failure of either the AGENCY or the CONSULTANT to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or

remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

Section 33. DRAFTING AMBIGUITIES.

The PARTIES agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

Section 34. CONFLICTS BETWEEN TERMS.

If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

Section 35. EXHIBITS INCORPORATED.

Exhibits "A" is incorporated into the Agreement by this reference.

Section 36. SIGNING AUTHORITY.

The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party hereto harmless if it is later determined that such authority does not exist.

*****SIGNATURES ON FOLLOWING PAGE*****

IN WITNESS WHEREOF the PARTIES hereto have executed this Agreement on the day and year first hereinabove written.

AGENCY:

IMPERIAL BEACH REDEVELOPMENT
AGENCY SUCCESSOR AGENCY,
a public entity

CONSULTANT:

JONES HALL,
a California professional law corporation

Gary Brown, Executive Director

David T. Fama, Principal Attorney

APPROVED AS TO CONTENT:

Kathleen VonAchen, Treasurer/
Administrative Services Director

APPROVED AS TO FORM:

Jennifer M. Lyon, City Attorney

Proposal for
BOND/DISCLOSURE COUNSEL

presented to the
IMPERIAL BEACH SUCCESSOR AGENCY

presented by
JONES HALL
A PROFESSIONAL LAW CORPORATION

May 28, 2013

Submitted by: Jones Hall, A Professional Law Corporation
Contact Persons: David Fama
Business Address: 650 California Street, 18th Floor
San Francisco, California 94108
(415) 391-5780
dfama@joneshall.com

1. Some Basic Facts

Type of Practice: Law, Exclusively Municipal Bonds. The firm is qualified to serve both as bond counsel and disclosure counsel and has in-house tax capabilities.

Total number of attorney principals: 11

Total number of associates: 4

2. Qualifications of the Firm

Jones Hall was established in 1978 and has been in business as a “municipal bond only” firm since that time, meaning it is a firm of bond specialists, it has no other practice areas. Given that municipal bonds is its only practice area, it has extensive experience as summarized below, which makes it well qualified for your undertaking.

Jones Hall is structured so as to provide the highest quality bond counsel services in the most effective and efficient manner possible and our over 30-year reputation confirms it. We believe that as a result of our unique attributes, our clients are provided with experienced senior attorneys and significant advantages that are not equally obtainable elsewhere.

The firm is well known in the bond industry in California and is listed in the directory of municipal bond attorneys in *The Bond Buyer's Municipal Marketplace*. The firm only represents governmental issuers in the State of California.

Jones Hall is a firm specializing in municipal finance, its sole practice area, and is one of the most active municipal finance firms in the country. During the past fifteen years, more local California agencies have used Jones Hall as bond counsel on their long-term financings than any other law firm, based upon statistics compiled by the California Debt Investment and Advisory Commission.

For several recent years, Jones Hall was the second-ranked bond counsel firm, the top ranked disclosure counsel firm in terms of number of issues, according to Thomson Reuters Financial. During the period from January 1, 2002 through December 31, 2011, Jones Hall served as bond counsel on over 1750 California bond issues, and as disclosure counsel on over 1100 California bond issues. During calendar years 2009 through 2011, based on data prepared by Thomson Reuters, Jones Hall participated as bond counsel on approximately 404 municipal financings in California (totaling approximately \$7.95 billion in principal amount), as disclosure counsel on approximately 370 financings (totaling approximately \$8.05 billion in principal amount) and as underwriter's counsel on approximately 74 financings (totaling approximately \$2.02 billion in principal amount). In addition, over the past five years, Jones Hall served as disclosure counsel on more transactions than any other law firm in the country.

We represent virtually every type of public agency in California, principally including cities, special districts, counties, school districts, and redevelopment agencies (now successor agencies), having served as bond counsel for over 1,200 public entities in the State of California. The depth and breadth of the experience of the firm's attorneys enables us to bring a level of knowledge and creativity to the structuring of financing transactions that is far greater than that of most bond counsel firms.

Federal Tax Matters. Jones Hall has great experience in the federal tax aspects of municipal finance. The firm's tax partner, David Walton, was the attorney advisor on tax-exempt bonds for the United States Treasury Department prior to joining the firm. During his two years with Treasury, Mr. Walton played a key role in revising reimbursement rules and in the allocation and accounting provisions, and has been widely praised by the industry for helping to make tax-exempt bond rules simpler and more workable.

3. Assigned Professionals.

Jones Hall consists of 11 partner attorneys and 4 associate attorneys. Our work style is that all assignments are handled directly by a partner. While all partner level attorneys have expertise in revenue bonds and certificates of participation, the day to day responsibility for the assignment, will be with David Fama. Steve Melikian will be available to provide back-up services, if needed. David Walton is the tax specialist for the firm and will assist with the tax-exemption legal considerations.

David T. Fama. Mr. Fama is a principal attorney in the firm and has over 20 years of municipal bond experience and joined Jones Hall in 2000. He has experience in all types of municipal financings, both as bond counsel and disclosure/underwriter's counsel. He currently serves as bond counsel or disclosure counsel to numerous cities and special Agencies. Mr. Fama attended Santa Clara University and Pepperdine University Law School. He was admitted to the California Bar in 1979 and is a member of the American Bar Association and the National Association of Bond Lawyers.

Andy Hall. Andy Hall is a graduate of the University of Michigan and of its Law School. Mr. Hall was admitted to the California Bar in 1963 and has almost 50 years of experience as a municipal bond counsel. During his career, Mr. Hall has had extensive experience in serving as bond counsel and disclosure counsel in the issuance of tax allocation bonds. During the five years prior to the dissolution of redevelopment agencies, Mr. Hall served as bond counsel or disclosure counsel with respect to over 50 issues of tax allocation bonds. In recognition of his extensive experience, the California Redevelopment Association in 2011 presented to Mr. Hall its "Lifetime Achievement in Redevelopment Award".

David Walton (Tax Specialty). Mr. Walton joined Jones Hall in 1992 and practices in the tax area exclusively. From 1989 to June of 1990, he was Counsel to the Assistant Chief Counsel (Technical) - Financial Institutions and Products at the Internal Revenue Service; and for two years thereafter served as an Attorney-Advisor in the Office of Tax Policy at the United States Department of Treasury where he specialized in tax-exempt finance. Mr. Walton attended Brigham Young University, where he received a B.S. degree in 1980, and Hastings College of the Law, where he received his J.D. degree in 1983. He was admitted to the Utah Bar in 1983 and the California Bar in 1990. He is chair of the National Association of Bond Lawyers Committee on Arbitrage and Rebate, a member of the Committee on Tax-Exempt Finance of the American Bar Association, and a member of the Editorial Advisory board of the Public Finance Advisor.

Others in the firm can be available as and if needed. If selected, we do not currently expect to utilize associate attorney staff on this assignment, however associate attorneys are available to be involved from time to time- but note that our work is never "handed over" to an associate for unsupervised or minimally-supervised handling. Most, if not all, of the Agency's interface will be with a principal attorney. To assure your financing would be accomplished by an attorney which is representative of the firm's broad experience, our associate attorneys used primarily on an internal basis only. Many larger firms use partner-level attorneys to bring business in, then the actual work is done by an associate rather than by the more experienced partner which the client assumed would be performing the work; we do not do that.

Closers. Our closing coordinators assist our attorneys in all closing activities, and greatly alleviate the logistical and structural issues which is often a part of bond closings. The only task of the Closing Department is to create and gather closing documents and provide assistance to assure smooth closings and timely response to closing concerns by assisting the attorneys in all pre-closing, closing and post-closing logistics. Each closer has a minimum of 10 years experience at the sole responsibility of closing municipal bond financings. Given the high volume of bond transactions we handle, we are particularly proud to offer this closing expertise, especially now that many of our rivals are attempting to emulate us by developing their own closing departments. As the transaction approaches a closing, we will assign one of the professionals from our Closing Department to take charge of the logistics of completing your financing.

4. Dissolution of Redevelopment Agencies.

Jones Hall, prior to the passage of ABx1 26, was the most active bond counsel firm in the State with respect to tax allocation bonds. In addition to representing, as bond counsel, several of the largest issuer of tax allocation bonds, including the Redevelopment Agency of the City of San Jose, the Redevelopment Agency of the City and County of San Francisco, the Redevelopment Agency for the County of Riverside, the Redevelopment Agency of the County of Sacramento, and the Redevelopment Agency of the City of Oakland, Jones Hall also represented, as bond counsel, small and medium sized redevelopment agencies, including that of Imperial Beach for the 2010 tax allocation bond issue.

Subsequent to the passage of ABx126, Jones Hall has worked with several clients, including the City of San Jose and the County of Riverside, as well as several smaller agencies, to ensure that certain obligations, which the redevelopment agencies considered to be "enforceable obligations", were properly listed on the Recognized Obligation Payments Schedule ("ROPS") and recognized as "enforceable obligations" by the applicable County and the Department of Finance ("DOF"). For example, after the County of Santa Clara determined that three separate reimbursement agreements between the Town of Los Gatos and the Redevelopment Agency of the Town of Los Gatos supporting lease financings of the Town were not "enforceable obligations", we prepared a memorandum that convinced the County to reverse its decision and to permit the Town, as successor agency, to include the reimbursement agreements on its ROPS. Similarly, after DOF had determined that a similar reimbursement agreement between the Redevelopment Agency of the City of Suisun City and the City of Suisun City was not an "enforceable obligation," we talked with DOF on behalf of the City of Suisun City and were able to persuade DOF to reverse its decision and to treat the reimbursement agreement as an "enforceable obligation."

In addition to working with clients to resolve issues relating to their ROPS, the use of bond proceeds, and other matters arising under ABX1 26, Jones Hall took the lead in drafting the bond provisions included in AB 1484 and in working to convince legislative staff and others in Sacramento that such legislation was needed to allow for the refunding of existing debt for savings. In connection with this effort, we organized a letter writing campaign of California bond counsel firms, and were able to deliver to the DOF, the State Treasurer and others in Sacramento letters from five of the most active bond counsel firms in the State to the effect that, without the addition of Section 34177.5 of the Health and Safety Code, bond counsel firms would not be able to give unqualified opinions on tax allocation bonds post ABx1 26.

Unfortunately, subsequent to our involvement in preparing the early drafts of Section 34177.5 of the Health and Safety Code, language was revised and additional language added that confused some of the issues we were attempting to resolve in our drafting. Accordingly, while we are currently working with several clients on potential refinancings under this section,

we are still addressing these issues, which include the exact nature of the pledge of tax increment, the ability to use low and moderate income tax increment to pay debt service on non-housing bonds, the applicability of tax increment caps and other plan limitations in a post ABx1 26 environment, and the effect of the litigation, including the lawsuit filed by the bond insurer Syncora, challenging the constitutionality of ABx1 26. Based on these issues, Jones Hall may require, in certain instances, a validation action resulting in a favorable judgment in order to be able to render an unqualified opinion with respect to refunding bonds under ABx1 26.

5. Insurance.

The firm's malpractice coverage is through a policy of Lawyers Professional Liability Insurance issued by Lloyds of London with a \$7.5 million limit of liability. Current proof of insurance is available upon request. The firm has no pending claims or disputes. During the term of the engagement the firm will maintain the professional liability insurance policy covering, among other things, securities and malpractice related claims, in full force and effect.

6. Fee Structure.

The firm does not bill by the hour and has no schedule of hourly rates. Our fee for each bond issue as bond counsel and/or disclosure counsel is entirely contingent upon a successful bond closing, and is payable at closing.

Bond Counsel. We propose a fee of using the same formula as for the 2010 tax allocation bonds for the Imperial Beach Redevelopment Agency, which was 1% of the par amount for the first \$1 million of par, 1/2% of the next \$4 million, 1/4% of the next \$10 million and 1/8% of the remaining par amount. We contemplate there will be extra steps in this financing due to the Oversight Board and Department of Finance approval process; given our recent experience in this area we no longer feel compelled to charge extra for the necessary advice and expected documentation for those submissions, however our role as bond counsel does not include serving as successor agency counsel- we assume the Agency has its own counsel handling day-to-day legal matters; services of such counsel may be warranted as part of the approval process- for instance, Oversight Board interaction and if a meeting with DOF is required.

Our fee is contingent upon successful closing and payable at closing. We do not charge for travel. We would additionally expect to be reimbursed for actual out-of-pocket expenses associated with the transaction, which in most financings is comprised mainly of the official transcript preparation in paper and/or CD formats, and shipping charges. This would also be contingent. We do not charge for copying, secretarial, internal staff, etc. Our out-of-pocket expenses will be capped at \$2,500.

Disclosure Counsel. We propose a fee of \$30,000 for disclosure counsel services for the financing described in your RFP. This is higher than our 2010 fee and reflects the substantial extra work involved arising out of the dissolution of redevelopment agencies as well as the increased disclosure scrutiny arising out of the Dodd-Frank financial reform legislation. Our fee for serving as disclosure counsel is also contingent upon a successful closing and payable at closing. We will not charge for travel. No out of pocket costs would be charged except for charges, if any, directly billed to the firm by third party vendors (for example if applicable, CalMuni data reports).

Our fees include reasonable and customary follow-up advice regarding the financing and requested by the Agency, so that the Agency can expect to pay only once, at bond closing.

Thank you for the opportunity to present this proposal to the Imperial Beach Successor Agency. Feel free to contact me; I look forward to hearing from you. Contact information is below

David T. Fama
JONES HALL
650 California Street, 18th Floor
San Francisco, California 94108
(415) 391-5780
fax: (415) 391-5784
dfama@joneshall.com